HOGAN & HARTSON
L.L.P.

MACE J. ROSENSTEIN
PARTNER
DIRECT DIAL (202) 637-5877

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910

November 23, 1998

BY HAND DELIVERY

The Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Permitted Ex Parte Presentation
MM Docket Nos. 91-221; 87-8; 94-150; 92-51; 87-154; 94-149 and 91-140

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's Rules, this letter, being filed in duplicate in each of the above-referenced proceedings, will advise the Commission that, on November 19, 1998, Jonathan F. Miller, President and Chief Executive Officer, and Julius Genachowski, General Counsel and Senior Vice President, USA Broadcasting, and undersigned counsel met with Helgi C. Walker of Commissioner Furchtgott-Roth's staff to discuss a proposal to permit limited television duopolies involving undeveloped stations located in major television markets. The USA Broadcasting representatives also provided documents (attached hereto) setting out details of this proposal and describing WAMI-TV, USA Broadcasting's station in the Miami-Ft. Lauderdale market.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

By: [signature]
Mace J. Rosenstein

Attorneys for USA Broadcasting

Enclosures

cc: Helgi C. Walker

AN "UNDEVELOPED STATION" DUOPOLY EXEMPTION WILL SIGNIFICANTLY ENHANCE LOCAL DIVERSITY, COMPETITION AND OPPORTUNITY, AND IS NECESSARY TO CONVERT UNDEVELOPED UHF STATIONS INTO FULLY PROGRAMMED LOCAL OUTLETS

A narrowly-drawn "Undeveloped Station" duopoly exemption would permit common ownership of attributable interests in two television stations –

- **in the top-50 DMA markets, where**
- **at least one of the stations is a UHF station, and**
- **at least one of the stations has a less than 5 percent share of either or both total market audience or revenue.**

A. USA BROADCASTING: PROVIDING UNIQUE – AND COSTLY – LOCAL PROGRAMMING ALTERNATIVES.

1. USA Broadcasting's approach to local television service -- called "CityVision" --is uniquely responsive to the core diversity concept underlying U.S. communications policy.

    - USA Broadcasting is attempting to turn its group of undeveloped UHF stations into outlets that will provide significant amounts of local news and entertainment programming serving all segments of their diverse local communities.
    - USA Broadcasting's experience to date demonstrates that providing significant amounts of high quality, locally-produced diverse programming will be economically infeasible unless it can combine forces with stronger stations in its markets.
    - USA Broadcasting is effectively penalized by a rule that prevents it from capitalizing on natural efficiencies that experience proves are crucial to the emergence of its CityVision concept.

2. USA Broadcasting launched its first CityVision outlet, WAMI, in the Miami/Ft. Lauderdale market, in June 1998. Its initial program offerings include:

- "The Times," a news show emphasizing issues of local interest and concern and that seeks in a variety of ways to offer a news service that is different from traditional local news shows. For example, "The Times" resists an "if-it-bleeds-it-leads" approach, and has covered just one murder in its first six months.

- "Generation ñ," a locally-produced program focusing on issues uniquely of concern to the second-generation Latino community.

- "Out Loud," a talk show devoted to local political, social and cultural issues.

- "City Desk," produced in collaboration with the Miami Herald, which follows newspaper reporters as they investigate stories of local interest.

- "WAMI on Miami," which consists of live, locally-produced educational and informational children's programming.

- "Election Times," which provided free time for candidate discourse.

3. Meanwhile, the conversion of WAMI from a home shopping stick to a vibrant local outlet has created new employment opportunities for a diverse group of more than 200 people, many of whom are being given their first opportunity to work in the television business.

4. Launching this truly local television presence has been extremely costly and risky.

    - For its first six months of operation, the costs of developing WAMI's CityVision format will be in excess of $30 million.

    - Station revenues, meanwhile, will be insufficient to cover the costs of the CityVision concept.

    - Simply stated, based on USA Broadcasting's market experience to date, the television marketplace will not support the level of original, local, diverse programming provided over WAMI absent the opportunity to enter into business combinations with stronger stations.

B. AN "UNDEVELOPED STATION" EXEMPTION WOULD DIRECTLY BENEFIT THE PUBLIC INTEREST IN DIVERSITY, COMPETITION AND OPPORTUNITY.

1. In an increasingly crowded television marketplace characterized by decreasing broadcast television viewership, trying to turn an undeveloped UHF station into a fully programmed, locally-focused station responsive to the needs, interests and concerns of all segments of its increasingly diverse community is an extremely high cost, high risk venture.

    - Programming targeted exclusively to the local community necessarily must depend exclusively on local advertising revenues.

    - Because new local programming is unlikely to receive high ratings initially -- or ever -- local advertisers have a low appetite for supporting such programming, however much it serves the public interest.

    - The smaller pool of advertising dollars available to support such programming, in turn, limits the funds available for production.

    - Meanwhile, stations that wish to provide new local programming must overcome both viewer and advertiser loyalties to entrenched competitors, as well as the steady downward trend in broadcast television viewing.

    - In addition, marginal stations are saddled with the same DTV conversion costs -- and uncertainties -- as their established competitors. It is inconceivable that a marginal station would opt to make the significant investment necessary to be able to produce digital programming, especially local programming.

2. Allowing weaker UHF stations to achieve operating efficiencies by sharing operations and costs with other, stronger stations would make it possible to lower the significant economic and other barriers that continue to preclude such stations from producing original local programming and otherwise becoming effective competitors in their markets.

- Cost savings would result from the ability to spread fixed managerial, administrative and marketing resources over a larger range of activities. There also would be no need to duplicate costly studio and production facilities necessary to originate local programming.

3. The resultant savings, in turn, would translate directly into increased quantity and quality of local programming and enhanced service to the community.

   - Expanded production of local programming also would generate significant employment opportunities in all aspects of the television business.

4. In order to become stronger voices in their markets, thereby enhancing the public interest in diversity, competition and opportunity, undeveloped UHF stations must be allowed to enter into business combinations with stronger outlets in their markets.

5. The only way to induce strong local outlets to enter into such cost- and resource-sharing relationships with their weaker UHF counterparts is by creating economic incentives, such as significant equity participation or other attributable ownership interests.

C. CREATION OF AN "UNDEVELOPED STATION" EXEMPTION WOULD REFLECT THE COMPETITIVE REALITIES OF THE VIDEO MARKETPLACE.

1. Congress previously has concluded that the top-50 media markets are sufficiently competitive to justify relaxation of ownership restrictions involving television stations.

   - Section 202(d) of the 1996 Telecom Act directed the FCC to extend its existing presumptive waiver standard under the "one-to-a-market" rule from the top-25 to the top-50 markets.

2. A narrow duopoly rule exemption to permit ownership combinations involving weak UHF stations in major markets is justified by the diversity and competition provided in those markets by alternative forms of video program delivery, including cable television, wireless cable, DBS and VCRs.

- The FCC previously has taken these factors into consideration in modifying the national television multiple ownership rules in 1985 and other structural restrictions on television broadcasters, such as the financial interest and syndication rules and the prime time access rule.

- MVPDs which directly compete with broadcast television stations offer multiple channels, generally without restrictions on the number of channels in which they may have an ownership interest (only cable operators are restricted from having attributable interests in more than 40 percent of the satellite program channels they carry).

- Meanwhile, broadcast television viewership continues to erode in the face of increasing competition from satellite delivered program channels.

D. ABSENT AN "UNDEVELOPED STATION" EXEMPTION, MORE THAN MINIMAL GRANDFATHERING OF TELEVISION LMAs WOULD BE UNSUSTAINABLE AS A MATTER OF LAW AND POLICY

1. If the television duopoly prohibition is retained without an exemption for combinations involving weak UHF stations in major DMA markets, there is no policy or legal basis to extend "grandfathered" status to existing LMAs, which involve not only weak UHF stations but also established UHF and VHF outlets in large, medium-size and even very small television markets. Such an outcome would be arbitrary and unjustifiable, especially where the Commission previously has recognized that it is illogical and inconsistent with the the dual policy goals of diversity and competition to prohibit a licensee from having an attributable interest in another station in the same market while permitting it to program and operate that station pursuant to a contractual arrangement. Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2788-89 (1992) (refusing to permit "a local station owner to substantially broker a station in its market which it could not own under our new [ownership] rules").

2. Any decision to grandfather existing LMAs would effectively legitimize arrangements which are functionally indistinguishable from the common ownership that the Commission would have determined would disserve the public interest, while, at the same time, affording an unjustifiable competitive advantage to certain local broadcasters.

USA BROADCASTING

November 19-20, 1998

USA BROADCASTING

wami

The Goal

- Turn USA Broadcasting Home Shopping sticks into fully programmed local television stations
  - Increase diversity of programming
  - Provide new competition
  - Create opportunity through hundreds of new TV jobs
  - Serve the local community

USA BROADCASTING

wami

Before

Miami Market - June 8, 1997

A Home Shopping Stick

- Channel Position: 69
- Call Letters: WYHS
- Programming: Home Shopping Network
- Employees: 4

USA BROADCASTING

wami

After

USA BROADCASTING

wami

Miami Market - June 8, 1998

A fully programmed, local, TV station

- Channel Position: 69
- Call Letters: WAMI
- Programming: 35.5 hours/week of locally produced shows, including:
  - *City Desk* Local, informational
  - *Out Loud!* Local talk, issues
  - *WAMI on Miami* Local, live, kid-friendly, educational programming
  - *Generation ñ* Local programming focussing on the Hispanic community
  - *The Times* Local news show
  - *Election Times* Free time for candidate discourse
- Employees: 210
  - New local jobs in every aspect of the television business (staff + shows)